[Original]

D HAygood
NAME

V09189
PRISON NUMBER

C.S.P Sac IV
CURRENT ADDRESS OR PLACE OF CONFINEMENT

P.O.BoX 290066 Represa, ca 95671
CITY, STATE, ZIP CODE

FILED
APR - 1 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY KM DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

D. HAYGOOD,
(FULL NAME OF PETITIONER)

PETITIONER

v.

James Walker,
(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

Gerry Brown,
The Attorney General of the State of California, Additional Respondent.

Civil No 08CV0374 JAH (BLM)
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

FIRST AMENDED
PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: ReFerr to page "2" → same

2. Date of judgment of conviction: same

3. Trial court case number of the judgment of conviction being challenged: same

4. Length of sentence: same

MC–275

This petition concerns:

- [x] A conviction
- [ ] Parole
- [ ] A sentence
- [ ] Credits
- [ ] Jail or prison conditions
- [ ] Prison discipline
- [ ] Other *(specify)*: ______

1. Your name: Darrow Dewaun Haygood
2. Where are you incarcerated? California State Prison (New. Folsom) Represa, Calif. 95671-0066
3. Why are you in custody? [x] Criminal Conviction [ ] Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Count 1. Robbery First Degree in concert: Personal used a Fire arm (shotgun): Association with a criminal street gang with the specific intent to promote and assist criminal gang members.
Count 2. Robbery, First Degree in concert: Personal used A Fire arm (shotgun): Association with a criminal street gang with the specific intent to promote and assist criminal gang members.

b. Penal or other code sections: PC 211; PC 213(a)(1)(A): PC 186.22(b)(1); PC 211; PC 213(A)(1)(A) 186.22

c. Name and location of sentencing or committing court: Superior court of California county of San Dieg East county Division, 220 West Broadway, San Diego, California 92101

d. Case number: Superior court No. SCE229595

e. Date convicted or committed: September 10, 2003

f. Date sentenced: October 8, 2003

g. Length of sentence: 26 years

h. When do you expect to be released? ______

i. Were you represented by counsel in the trial court? [ ] Yes. [ ] No. If yes, state the attorney's name and address:

______

4. What was the LAST plea you entered? *(check one)*

[x] Not guilty [ ] Guilty [ ] Nolo Contendere [ ] Other: ______

5. If you pleaded not guilty, what kind of trial did you have?

[x] Jury [ ] Judge without a jury [ ] Submitted on transcript [ ] Awaiting trial

Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"): Court of appeal - State of CaliFornia Fourth appellate District

b. Result: Denied

c. Date of decision: ____________

d. Case number or citation of opinion, if known: ____________

e. Issues raised: (1) ____________

(2) ____________

(3) ____________

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

Boyce & SchAeFer, Robert E. Boyce 934 23rd street san Diego, ca 92102-1914

Did you seek review in the California Supreme Court? ☒ Yes. ☐ No. If yes, give the following information:

a. Result: Denied

b. Date of decision: ____________

c. Case number or citation of opinion, if known: ____________

d. Issues raised: (1) ____________

(2) ____________

(3) ____________

0. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

InEFFective Assistant OF Appellant counsel in Failing to raise the grounds on Direct appeal.

1. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

____

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

administrative remedies

ther than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, ommitment, or issue in any court? [ ] Yes. If yes, continue with number 13. [x] No. If no, skip to number 15.

(1) Name of court: N/A

(2) Nature of proceeding (for example, "habeas corpus petition"): N/A

(3) Issues raised: (a) N/A

(b) N/A

(4) Result *(Attach order or explain why unavailable)*: N/A

(5) Date of decision: N/A

(1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Issues raised: (a) N/A

(b) N/A

(4) Result *(Attach order or explain why unavailable)*: N/A

(5) Date of decision: N/A

For additional prior petitions, applications, or motions, provide the same information on a separate page.

any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

N/A

N/A

plain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) Cal.2d 300, 304.)

INEFFective Assistant oF Appellate counsel in Failing to Raise these Grounds on Direct Appeal

e you presently represented by counsel? [ ] Yes. [ ] No. If yes, state the attorney's name and address, if known:

you have any petition, appeal, or other matter pending in any court? [ ] Yes. [ ] No. If yes, explain:

his petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

This petition is Being made in the state lower court having Jurisdiction to correct the violation oF petitioner's right's to a Fair trial.

ndersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that egoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as se matters, I believe them to be true.

Date: Aug 14 2007

Darrow Hazard

(SIGNATURE OF PETITIONER)

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6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)*

INEFFective Assistance OF trial Counsel in Failing to OBJect to the AdMissiBility OF the Tape-Recorded InterView OF petitioner when Detective M. Mercado Who INFormed Petitioner that he was Under Arrest Did Not read Miranda Rights.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time *(when)* or place *(where)*. *(If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

On FeBruary 18, 2003 petitioner (Haygood) and three other men, (Keyon George, and Anthony Gardner) as well as another Man Alleged to have Been Jerry Grinston, RoBBed Jesse and paul Savage at Gun point while they were in Jesse's Bedroom at their parent's La mesa home Where gardner had previously live For aperiod OF Time. The RoBBer's took around $800 in cash, Marijuana, Numerous CD's and DVD's, a cellphone, a hat and and Jessies IdentiFication Card. When the roBBer's leFt, Jesse Immediately Called 911, Telling the operator that "Four Black guy's With gun's" had Just RoBBed him, including one Named gardner, whom he Believed had set him up. The police arrived at the savage home within several Minutes to interview Jesse and paul. IN the meantime a lamesa police OFFicer that was on patrol in the vacinity iN the

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Strickland V. Washington, (1984) 466 U.S. 668. 801 Ed 2d 674. 104 S.ct 2052
Colorado V. CONNelly, 479 U.S. 157, 163 (1986) (Dictum)

area recieved a Dispatch call about the incident and saw a Black male, wearing a red shirt, pants, red sNeaker and a hat later identified as Belonging to Jesse, running From the Direction of the savage home and Detained Him. The MaN, who was later identified as george, then threw the hat he was wearing ON the ground. The OFFicer patted him DowN, Finding a large wad OF MONey, a cell phone, and Jesse's Identification card. After Jesse Identified George iN a curBside lineup as one oF The RoBBers, George was Arrested. As the officer placed George iN his patrol car, George sang out "piru".

Although No gun was Found in George's possession, Another LAMesa police officer Found a large unloaded revolver UNderNeath a Truck parked Near the savage home and CD case iN a grassy area Near a Driveway close By the home. Jesse identified the Revolver as the gun George had used iN the incident.

Based ON the Broadcast iNformation about the iNcideNt, gardNer was Arrested three Day's Later and TurNed over to LAMesa police officer Marco Mercado, the iNvestigating Detective AssigNed to the case, who then interviewed him. ANother subject Who Matched the Description of ONe of the Fleeing RoBBers was Also turNed over to Mercado. A photographic LiNeup of That suspect was shown to Both Jesse and paul ON March 31, 2003 But Neither could identify him as Being iNvolved iN the RoBBeries.

Because Further investigation revealed that phone Numbers For petitioner (HAygood), and a person Named Anthony had appeared ON Jesse's cell phone caller I.D. For the morning of the robberies, Mercado put together Another photographic Lineup containing Martin's photo to show Jesse and paul Later ON March 31, 2003. Although paul could Not recognize Anyone From that photo line up, Jesse identified martin as looking "like the guy with the Bengals T-shirt [Gardner] Brought. That is the guy that [Gardner] Brought." When mercado showed Jesse a photo lineup containing petitioner's photo ON April 9, 2003, Jesse identified petitioner saying "Im 100 percent positive that's him". He's the guy holding the gauge. Based ON Additional Investigation, which revealed that Petitioner (Haygood) and martin were roommates, Mercado OBtained a search warrant to search their apartment in spring Valley. Neither was home when the search warrant was served ON April 12, 2003, and the apartment was Found to Be vacant. Detectives Then went to petitioner's Uncle's apartment in the same complex and Found Petitioner Haygood there. petitioner initially Denied who he was, He matched the photo the Detectives had of petitioner, and petitioner's uncle confirmed, "thats him."

Petitioner HAygood at that time was taken Down To the police station where he was placed inside OF A Interview Room, To Be questioned as Detective M. Mercado informed Petitioner That a robbery occurred in which petitioner was picked out of a photo. Petitioner was asked to have a seat as Detective mercado will Be Back any second.

Detective M. mercado returned to the interview room and stated to petitioner: Alright man, as I Explained to you, A Robbery occurred. you were picked out of a photo Line up. your phone Number was used prior to that. Now what can you tell me? What can you tell me about this? See Attached Tape-Recorded Interview of Darrow Haygood 0044 page 2 Line 5-17 (Exhibit-A). Petitioner at that time Told Detective Mercado that he had Been present at the Time of the Robbery in the savage home. Petitioner claimed there were only three Black men at the Savage home (George, Gardner and himself). And that it was only George who had a gun and had asked for money while telling him (petitioner) to grab some marijuana as they fled the scene. Detective Mercado questioned petitioner about what was he wearing, Does petitioner claim a gang. Detective Mercado further questioned Petitioner if co-defendants Keyon and Tony Bang and if petitioner Ever seen 'em kicking it with Bangers? what's the gang in that Area? Petitioner informed Detective Mercado that Basically He Don't Know What He's Doing here. Detective Mercado at that Time agian informed petitioner that he were implicated in a Robbery, Okay? you were there at the commission of a robbery, okay? He told petitioner that's, what he's Doing here. Detective Mercado at that time stated: Okay, you're under arrest for Robbery Alright, and I'll tell you right Now your story Doesn't match up for what's going on, in Anyway. your story Does Not match up But your record's Clean

During this tape recording Interview, petitioner Made incriminating statements putting himself involved in the Robbery with co-defendant's. Petitioner while Being questioned By Detective Mercado, Also made incriminating statements about his co-defendants as to them Banging, seeing him out side with a lot of 'Em kicking It, Other people come From Hidden Meadows. Petitioner saw Jerry and Gardner were gonna Beat him up, Im like his Face looks swollen they must have Beatin him up, stated petitioner.

The prosecutor offered the tape interview of Petitioner into Evidence to use agianst petitioner as to Both the Robbery charges and the charges of the gang Enhancements. At Trial, Detective Mercado Also read to the Jury his summary of petitioners statements. The Jurors were supplied with a copy of the Transcripts and the tape interview was played in open court.

The prosecutor were also allowed to Bring in his investigator James Bushway to testify about gangs, East side Piru, "Blood" gang colors, Wearing red or Black and that some will wear green, In the gang world. He also called in gang Expert John Davis. Petitioner contends that his trial counsel was inEffective in Failing to object to the Admissibility of the Tape interview.

"Counsel" Never pursued the question of whether Petitioner had Been read his Miranda rights, and unreasonably Failed to Challenge the admissiBility of Petitioner's Tape-Recorded Interview on the grounds that Petitioner's Entire tape-recorded Interview, in which all Statement's made while Being questioned By Detective mercado was Not Knowing, intelligent and voluntary, As Detective Mercado Never read petitioner his miranda rights once Petitioner was Arrested. Clearly During the Tape interview of petitioner, once Detective mercado stated: you were implicated in a RoBBery okay? you were there at the commission of a RoBBery okay? You're under Arrest For RoBBery! Detective Mercado had the Duty to read Petitioner his Miranda right's In Which He Did Not.

Here Petitioner contends that trial counsel was iNEffective Assistance of counsel in Failing to OBJect to the AdmissiBility OF the Entire Tape-Recorded interview confession on the grounds that it was Not Knowingly, intelligent and Voluntary as Detective Mercado Did Not Ever read petitioner his miranda rights. Such OBJections would have resulted in the exclusion OF (1) Petitioner's Entire confession in Total (2) Detective Mercado's Testimony as to petitioner's confession (3) Both of the Testimony's OF the Prosecutor's witnesses Detective mercado who was the Prosecutor's investigating officer and James Bushway also the Prosecutor's Investigator gang Expert testimony as to gangs (4) Detective Mercado's Summary Wrote and read to the Jury, OF Petitioner Haygood AND (5.

The Prosecutor using them in support of the robbery charges as well as the charges of gang Enhancement's agianst Petitioner. In Limine the court as well as Trial counsel for petitioner and the prosecutor Discussed the Admissibility of the Tape-Recorded Interview of Petitioner and Detective Mercado pretrial. It was Trial counsel's Duty to object to the Entire Tape-Recorded Interview confession on the grounds that it was not knowingly, Intelligent and Voluntary as Detective Mercado Did Not ever read petitioner his Miranda Right's. "[Id. At 444. Clearly states the court held that, unless the Defendant was informed of his Fifth Amendment right's before questioning, Any pretrial Statement's Elicited from him During Custodial Interrogation were Inadmissible at trial. (see Exhibit-A). By Trial counsel failing to object to the Admissibility of the Entire Tape-Recorded Interview being that petitioner was never read his miranda right's, Prejudiced petitioner and only then is when the court granted The admissibility of the Entire Tape-Recorded statement's from petitioner, in which Petitioner was Prejudiced by his Trial counsel's unreasonable performance that Fell Below objective standard of reasonabless, As well as proves that Trial counsel Also Failed to pursue Any Investigation into whether petitioner had been Mirandized preTrial. If Trial counsel for Petitioner "HAd pursued" An Investigation into whether Petitioner had been Mirandized, this would have Resulted in the objection preTrial of the Entire Tape-Recorded statement's of Petitioner, And by this Negligence by trial counsel to do so, This Identifies The Act and omission's of counsel that are Alleged not to have been the Result of reasonable professional Judgement, and that counsel's Deficient Performance prejudiced the petitioner resulting in a unreliable and Fundamentally unfair out come in the proceeding. (Strickland V. Washington) Further more, there is no Proof that petitioner had been read his Miranda right's before Talking with Detective Mercado. During the "Entire Interview of Petitioner's Being questioned In the Tape-Recorded Interview with Detective Mercado about the Robbery, gangs, and co-Defendant's, Petitioner was recorded from the Begining to the End Also proving that Detective Mercado Did Not Ever read Petitioner his miranda right's. (See Attached Tape-Recorded Interview of Petitioner Darrow Haygood (Exhibit-A) which are Documented transcript's of Petitioner's Interrogation at The Exact time of His Arrest when He was taken down to the Police Station And was taken into the Interview Room where Petitioner was questioned about the Robbery, gang and co-Defendant's And at No time was petitioner Ever Mirandized from the time of his Arrest or the time of his Interrogation In the Interview Room, Please See (Exhibit-A) For Factual Documented Proof of this! It is the Detective's word agianst **My Factual Proof!**

Petitioner contends that he was preJudiced By
His Trial counsel's unreasonable performance By Failing
To OBJect and allowing the prosecutor to offer
Petitioner's UN-Mirandized Incriminating confession,
The Tape recorded Interview, the Detective Mercado's
written summon's, and the Testimony of Both Detective
Mercado and Investigator gang Expert James Bushway
who also used petitioner's UN-mirandized Incriminating
Confession, All to Be used against petitioner to convict
Him ON all charges when in Fact, Detective Mercado
Did Not Ever read petitioner his Miranda rights.
See also petitioner Darrow D. Haygood Attached Declaration
under penalty of perjury (Exhibit-C). Also, Their was "No Waiver" Ever
Signed By Petitioner HAYGOOD.....
Because trial counsel's performance Fell Below the
OBJective standard of reasonabless and petitioner was
preJudiced By his Trial counsel's omissions which Led
to petitioner's conviction ON charges, Petitioner Further
Contends that his appellate counsel was also iNEffective
iN Failing to raise and/or argue this ground ON Direct
appeal.

There Fore, Petitioner's convictions should Be reversed
under the six Amendment to the United states
Constitution as a matter of Law.
(Colorado v. Connelly, 479 U.S. 157, 163 (1986) (Dictum), Involuntary
Confession Violates Due process clause of 5th 6th and 14th Amendments

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Ground 2

7. Ground 2 or Ground ______ (if applicable):

INEFFective Assistant oF trial counsel in Failing to pursue Any Investigation into whether petitioner had Been read his Miranda right's By Detective Mercado at Any Time prior to petitioner Making statement's.

a. Supporting facts:

As stated in ground one, in the inFormation Filed against petitioner, the prosecutor alleged that on FeBruary 18, 2003 petitioner (Haygood) and three other men, keyon George, Anthony Gardner and Jerry Grinston, RoBBed Jesse and paul savage at gun point while they were at Jesse's room at their parent's lamesa home where gardner had previously live For a period oF time. When the roBBer's leFt, Jesse immediately called 9-1-1 Telling the operator that Four Black guy's with gun's had Just RoBBed him, including one Named Gardner, whom He Believed had set him up. In the mean Time, a lamesa police OFFicer on patrol in the area who recieved a Dispatch call aBout the incident, saw a Black male wearing red shirt, pant's, red sneaker's and a hat later IdentiFied as Belonging to Jesse, running From the Direction oF the savage home and Detained him. The man who was later identiFied as George then threw the hat he was wearing on the ground. The OFFicer patted him Down, Finding a large wad oF money, A

b. Supporting cases, rules, or other authority:

LAMB V. Johnson, 179 F.3d 352, 356 (5th Cir. (1999)

cell phone, and JessE's identification card. Based ON the Broadcast information about the incident gardner was arrested three Day's later and turned over to Lamesa police officer Marco mercado, the investigating Detective Assigned to the case, who then Interviewed him. Another subject was also turned over to Detective Mercado.

Because Further Investigation revealed that For petitioner (haygood) and Anthony Appeared on Jesse's cell phone phone Numbers caller I.D. For the morning of the roBBeries, mercado Put together another photographic lineup containing martins photo to show Jesse and paul later on march 31, 2003.

Based on additional investigation, which revealed that Petitioner (HAygood) and martin were roomates, and Jesse and paul who identified petitioner as Being the guy holding the guage shotgun. Detective mercado oBtained a search warrant to search their Apartment iN Spring Valley. Neither was home when the search warrant was served ON April 12, 2003 and the Apartment was Found to Be Vacant. Detective mercado then went to Petitioner's uncle's apartment in the same complex, and Found petitioner Haygood there.

Petitioner initially Denied who he was, he matched the photo Detective mercado had of petitioner, and petitioner's uncle ConFirmed "that's Him." Petitioner at that time was taken Down to The police station By a Black and white unit police officer, where he Was then placed inside of a Interview room to Be questioned By Detective mercado who Did informed petitioner while at his uncle's Apartment, that a roBBery had occurred in which petitioner was Picked out of a photo.

When Detective mercado Entered into the interview room and stated to petitioner: Alright man, as I Explained to you, a robbery occurred. you were picked out of a photo Line up. your phone Number was used prior to that. Now what can you tell me? What can you tell me about this? see Attached Tape-Recorded Interview of Petitioner Darrow Haygood (Exhibit-A). Petitioner at that time went into making incriminating statements as he told Detective Mercado That He and other co-Defendants had Been present at the time of the robbery in the savage Home. while Being questioned By Detective mercado about co-Defendant's Being gang members, petitioner continued to make incriminating statements. Petitioner though while Being interviewed By Detective mercado informed Detective mercado that Basically, He Don't know what he's Doing Here. Detective mercado at that time again informed petitioner By stating: you were implicated In a robbery okay? you were there at the commission of a Robbery okay? That's what you're Doing here okay, you're under Arrest For robbery, Alright, and I'll tell you right Now your story Doesn't match up For what's going ON, IN any way. And like you said, you had a clean record man. Still, Again without Detective mercado informing petitioner of his Miranda rights, He continued to question petitioner who continued to make incriminating statements of Being present at the time of the robbery at the savage home with other co-Defendant's as well as incriminating statement of co-Defendants Being gang members in which the prosecutor used Petitioner incriminating statements agianst him to convict on all charges against Him.

The Prosecutor OFFered the tape Interview OF Petitioner's unmirandized incriminating statements Into Evidence, to use agianst Petitioner ON Both Robbery Charges and the charges OF the gang Enhancements. Detective mercado was also allowed to read to the Jury (without OBJections) his summary OF petitioner Haygood's Incriminating statement though clearly he Never read petitioner His miranda right's. Petitioner's trial counsel Failed to OBJect ON the Entire Tape recorded Interview as petitioner was Never mirandized, as well as Neglected to pursue an Investigation, Failing to Pursue an Investigation Into whether petitioner had Been mirandized or Not. IF Trial counsel For petitioner HAd pursued An Investigation Into whether petitioner had Been mirandized, this would have resulted in the OBJection Before Pretrial OF the Entire Tape-Recorded statement's OF petitioner. And By Trial counsel's Failure To pursue an Investigation this Identifies the Act and Omission's OF counsel that are alleged Not to have Been the result OF reasonable Professional Judgement and that counsel's Deficient Performance PreJudiced the petitioner, Resulting in a unreliable and Fundamentally unFair outcome in the proceeding. The prosecutor Further Brought in his Investigator gang Expert James Bushway to give his opinion about gangs Based ON petitioner's UNMirandized Incriminating confession to convict ON the gang Enhancement charges. Detective Mercado Did Not Ever read petitioner his Miranda right's or Explain to Petitioner how Everything petitioner say, can and will Be used agianst him, see Declaration OF petitioner Darrow D. Haygood (Exhibit-C). See Also (Exhibit-A) Tape Recorded Interview OF Petitioner.

Trial counsel had a copy OF the Entire Interview OF Detective mercado and petitioner From the Beginning to the End. Trial counsel KNew that During the middle OF [redacted] The Interview For the First time Detective Mercado informed →

Petitioner that he was under arrest For robbery,
But still he wasn't Mirandized. He KNew petitioner had
a clean record and there Fore Never Been arrested Before.
The Tape recorded INterview would alert reasonable
counsel to ask his client iF he was read his miranda
rights, here trial counsel Never asked petitioner, Nor Did
trial counsel ask Detective mercado.
Petitioners contends that his trial counsel's performance Fell Below
The OBJective standard oF reasonabless and that he was also
PreJudiced By his trial counsel Failing to pursue any Investigation
into whether petitioner had Been read his miranda right's By
Detective mercado at ANY time prior to petitioner
making INCriminating statements, Led to petitioners conviction
ON all charges, INFact Did also lower to prosecutor's Burden,
IN violation OF petitioner's six Amendment right to counsel.
Petitioner Further contends that his trial counsel
was iNeFFective in Failing to investigate in order to
argue and/or set a record For his Direct Appeal, and that
Petitioner's Appellate counsel was also iNEFFective iN Failing
to iNvestigate and argue INEFFective Assistance oF trial
counsel, IN Failing to investigate whether Petitioner had Been
read his miranda right's ON petitioner's Direct Appeal.
ThereFore, petitioner's convictions should Be reversed
under the six Amendment to the United State constitution
as a matter oF law. And the Fact that Detective Violated
Petitioner's Fourteenth Amendment right's By Failing to read
Petitioner his Miranda rights at any time after Being Arrested.
(LAMB V. JOHNSON, 179 F.3d 352, 356 (5th cir. (1999)).
[redacted]

4.D

"Prayer For Relief"

Petitioner is without remedy save by Writ of Habeas Corpus. Wherefore, Petitioner prays that the Court:

1. Issue and Order to Show Cause;
2. Allow Petitioner to Conduct discovery;
3. Conduct an evidentiary hearing;
4. Declare Petitioner's rights;
5. Appoint Counsel to represent petitioner;
6. Grant the writ of Habeas Corpus

Dated: Aug 14, 2007

[signature]

Darrow D. Haygood

Petitioner In Pro se

EXHIBIT COVER PAGE

A

EXHIBIT

Description of this Exhibit: TAPE-RECORDED INTERVIEW OF DARROW HAYGOOD (Petitioner) Interrogation Interview

Number of pages to this Exhibit: 35 pages.

JURISDICTION: (Check only one)

- [ ] Municipal Court
- Superior Court
- [ ] Appellate Court
- State Supreme Court
- [x] United States District Court
- [ ] State Circuit Court
- [ ] United States Supreme Court
- [ ] Grand Jury

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an. 1, 1997)

0043

PEOPLE V. DARROW HAYGOOD
DA No. MAH447 / LMPD 03-00943

TAPE-RECORDED INTERVIEW
OF
DARROW HAYGOOD

People's Ex
CR
Rec'd
Dept

Transcribed by: R. Olin

0044

LEGEND:
H = DARROW HAYGOOD
D = DETECTIVE M. MERCADO (LA MESA POLICE DEPARTMENT)

D: This interview will be with Darrow Haygood, Case Number 03-00943.
[LONG PAUSE - BACKGROUND NOISES AND CONVERSATIONS]
?: [SOUND OF DOOR OPENING] Have a seat right over here.
H: Okay.
?: And the detective will be back any second, alright?
H: Alright. [SOUND OF DOOR CLOSING]
[PAUSE IN CONVERSATION]
D: [SOUND OF DOOR OPENING/CLOSING] Alright man, as I explained to you, a robbery occurred. You were picked out of a photo line up. Your phone number was used prior to that. Now what can you tell me? What can you tell me about this?
H: Okay, want me to tell you early in the morning or--or about this situation right here?
D: Mm-hmm. About this situation right here.
H: Oh, well, first of all, I--want the whole, whole run down?
D: Mm-hmm.
H: Okay. Well, Tony--I just like barely moved there not too long ago.
D: Mm-hmm.
H: 'Cause I used to live in Canyon Par--Park prior.
D: Mm-hmm.
H: So the only reason why I got the--you know, moved back to Canyon Park was because, you know, I'm a good person. No--no hang out with groups of people and all that 'cause that's not tolerated over there by the lan--
D: Mm-hmm.
H: By the landlord. (Unintelligible). I used to live in Apartment 9 (unintelligible). Okay, now, Jerry and Keyon and all their little friends and stuff, they go back to Jerry's house.

D: Mm-hmm.
H: Ah, that--the apartment where they took pictures of--
D: Yeah.
H: With the kicked in walls.
D: Mm-hmm.
H: Yeah. They go back there, they hang out, sit on the porch, just talk and everything, right? Now by them being my neighbors, they come, "Oh, can I use your phone?" Oh, you know (unintelligible) man.
D: Uh-huh.
H: Oh, but sometimes you say, "Okay, yeah, you can come through and this and that." But as far as personally knowing them, there's no tie for personal--you know what I mean?
D: But you know who they are?
H: Yeah, because, you know, neighbors, apartments, gated communities--
D: Mm-hmm.
H: So forth and so on. Okay. Now, the time you're talking about with the cell phone.
D: Uh-huh.
H: Were--that guy--I don't--I don't know his name or anything like that, that has the cell phone.
D: Mm-hmm.
H: But Tony came in the house--
D: Tony who?
H: Tony. The--
D: Which Tony?
H: The--the guy you're talking about, the light skinned guy.
D: Which one? The light skinned guy. Okay.
H: Tony.
D: Tony Gardner?
H: I don't know his last name.

D: Tall--tall dude?
H: All I know is light skinned, and he's bald headed.
D: Yeah, okay.
H: Yeah. Okay, he, 'cause I guess he was homeless and didn't have no place to go or something like that--that's--that's what he said. He came here, he knocked on the door, I'm sitting there playing Play Station. This is during the day time now.
D: Mm-hmm.
H: I'm sitting there playing Play Station, he knocks on the door. I'm like, "What's up?" He's all, "Hey, can I use your phone?" I was like, "Mmm, go ahead." And he's like, "Hey, what's going on?" And he stood on the porch right there and I'm still playing, I'm still playing. Keyon's still playing, still playing. You know, we were just playing Play Station. And then what's his name, Tony was like, ah--
D: So Keyon was at the house that day?
H: Yeah, he came--he came--
D: Okay.
H: He came with Tony.
D: Okay, he came with Tony?
H: Yeah, they came over to my house.
D: Okay.
H: Yeah.
D: When you were--okay, let me stop--when you were there at your house, who was there with you?
H: No--it was just me.
D: It was just you?
H: Yeah.
D: Okay. Where's Anthony Martin?
H: Anthony Martin, he was, I guess, he was probably over at his baby's momma's house.
D: Okay.

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know this area real good." He was talking to Keyon. He's like, "I know this area real good."

D: Uh-huh.

H: And he's like telling you know, you know, "Don't even worry about it, you can go through this way." And I'm thinking to myself, "Uh-huh, yeah, whatever," you know. And then we knock on the door--well he knocks on the door and they say "Come in."

D: Mm-hmm.

H: And we come in and get in the house, go to the (unintelligible) you know, the mom's right there, she looks and everything. He's like--

D: Okay.

H: And then he walks in, 'cause I guess Tony knows 'em.

D: Uh-huh.

H: We get upstairs, sit on the bed (unintelligible). Hey, what's up, bro, what's up? He sits on the bed and, ah, Keyon and Tony sit down. And then, ah, they starting talking about, you know, this and that (unintelligible) and then um, then Keyon said something to Tony because I guess they had a fight a long time ago, a one-on-one--

D: (Unintelligible)

H: A real combat a long time ago.

D: Okay.

H: (Unintelligible)

D: He and Keyon?

H: Yeah. Yeah.

D: So when you--

H: (Unintelligible)

D: So when--I'm sorry--when you guys left, the three--you guys left, it was just you, Keyon and Tony? In your car?

H: Yeah.

D: Okay. Okay. So nobody else was there?

H: Huh-un.

D: Okay. Okay. Continue.

H: And then, um, okay, we get upstairs, everybody's sitting down, and then--and then Keyon and Tony, they started talking over something. I don't know what they was--you know, what it was over but they started talking over something and Keyon was like, "Well, you know what man?" I was like (unintelligible) and I'm getting sick of this too. You know, this--it's--you know what I mean? You come and (unintelligible) this and that and then--and then I said, I looked--I looked at, ah, whatever the guy that lived there--

D: Mm-hmm.

H: I looked at him, he's like--

D: Mm-hmm.

H: Like that and then Keyon was like--I mean, Tony was like, well, and he stood up and he's going like, "Well, if you want to do that--you can do it to somebody (unintelligible). And then--and then I'm like, "What?" And then his mom's standing right there in the doorway.

D: Mm-hmm.

H: I was like, "hey, hey," stop showing disrespect in the house. You know what I mean?

D: Mm-hmm.

H: I was like, don't disrespect the house like that. You know? (Unintelligible) Mom's right there and stuff. Don't (unintelligible). Whatever happened, happened. But I was like, I was like, "Don't bring it over here." Like that and then he--and then, you know, Keyon was like "Whatever--whatever." But he was like--he was trying to calm down with it but he really wasn't calmed down because he had started back up.

D: Mm-hmm.

H: But--but, what I mean is like the gesture wasn't like this.

D: Mm-hmm.

H: But it was like, man, but you know building up to escalate again.

D: Mm-hmm.

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H: Okay, so you know, they, they keep talking but it simmered down a little bit and they--and they get into it again. This time Keyon gets up--
D: Mm-hmm.
H: And he was like, and he pulled it out--whatever he had--
D: Was it a gun?
H: Yeah, he--but I don't know what kind of gun it was.
D: But it was a gun?
H: Looked old (unintelligible)
D: Okay, but it was a gun?
H: Yeah.
D: Okay.
H: And he told what's his name, he was like, you know what I'm saying and he started pointing it at Tony and Tony, you know, getting back to the door--
D: Mm-hmm.
H: Like this, like whoa, whoa, whoa. Like that. I'm looking like, what the fuck's going on? Ol' boy over here, he gets hysterical. He's looking, I'm like shhh, (unintelligible) and he gets hysterical and I'm like what the fuck? And I'm thinking, oh shit. And all I hear is "Where's the money? Where's the money? Where's the money?"
D: Who's saying that?
H: Keyon.
D: Keyon?
H: Yep. Tony, he was like--you know, he had like, but there was something weird about it, you know what I mean?
D: Uh-huh.
H: It was something real weird like, you know what I mean? Like they asked him about (unintelligible) and something. I don't even know that person. You know what I mean? For him to come to my house and use the phone--
D: Uh-huh.

H: And for them to talk about, yeah, yeah, and then for him to tell me, to ask, "Can you take me over there?" And for him to say, "Yeah, it's okay if you bring a friend." So I mean…
D: Okay, so what happened after that?
H: Well, after that, he asked 'em, he said, "Where's the money," whoa, whoa, whoa, ah, ah, he's like, "Over there, over there, over there" like that. (Unintelligible) he tells these two. He told me to get some stuff. I'm going, okay. I look over there and we grabbed some weed.
D: You grabbed some what?
H: Weed.
D: Grabbed some weed you mean.
H: Yeah, he's got the weed--I just grabbed some weed. He's like go over--"Nigger, what the fuck?" So I grabbed some weed.
D: Okay.
H: I took some weed, and I have some weed, and I have some weed in my pocket in my pants that I had.
D: Whose, ah, whose weed was it?
H: His.
D: Which one?
H: Ah, the--the one sitting on the bed. The--
D: The white guy?
H: Yeah.
D: The white guy?
H: Yeah. It was--it was by the--the window.
D: Mm-hmm.
H: In this little container next to his bed. Opened it, [MAKES WHISTLING SOUND] put it in my pocket and then, ah, he had him knock over his shoe box and he's like, "Where is it?" And Keyon knocked over the shoe box and then took the money.

D: Okay.

H: And there was some money over there, he took the money. And I was like, "Oh, fuck it, I got to leave." You know what I'm saying? And they--everybody just cut out. And I was like, oh.

D: So where'd you guys go after that?

H: Home.

D: Okay. Explain to me what happened. When you guys cut outta there, what happened? Which way did everybody go?

H: Well, I don't know which way everybody--I know where I went. I went to the car. I mean, everything was surprising to me. I don't even know this guy, talking about--

D: Mm-hmm.

H: "Can you take me here?" You know, "Can I use the phone?" "Oh, it's okay you can have friend with you." "Do you wanna go?" I wanna go--I mean, how you gonna get back? "Oh, no, no, he said it's cool, you can stay." So you know, so you can have a ride back, and so forth and so on. And then--and then, check this out. And then when I--when I get back home, they're--they're telling me that, ah, ah, the police were looking for me or something like that. I'm like, "Well, I didn't do nothing."

D: Mm-hmm.

H: Know what I mean? (Unintelligible) ah, ah, I talked to the landlord and, ah, she's like, yeah, the guys have some, ah, weapons, guns. I don't have guns. If you look me up in the computer, I have no warrants, never been arrested, outstanding record, everything. Tickets, everything, paid off. You can check me up right now. There's nothing.

D: I know. I have.

H: I'm solid, I'm clean, I'm everything. Why would I want to just bounce myself on something like that? I mean, you understand where I'm coming from?

D: I know. And--and exactly, I know exactly what you're talking--I know exactly who you are, and I know, you know, I know about your record, you're clean. You're completely clean. And--and right now--

H: The honest truth, right there. The whole rundown how I met them, how I (unintelligible) them and--

D: Then why am I getting a--I've gotten two totally different stories so far.

H: I--yeah, because there's two diff--you gotta think about this. When a person unknowingly to a person that has their plan already, how am I going to, you know, make sense with his? My story, I can take it over and over and over and over and over again.

D: But you gotta understand something though. My victim's story and Tony's story kinda go along the same line.

H: That's his friend. That's the one he spoke to and he said, okay, it's cool, you can bring a homeboy over there. So, I mean, I have no knowledge of him so--

D: But their story goes more along the lines, the whole way through. Yours is completely opposite from--from theirs. Why would my victim be--be lying to me in this whole thing?

H: The vict--well what did the victim say? Because I don't--because what--what he said or whatever he said, in comparison to what the story is. I know what I did--I know the (unintelligible) person who had- said "get that" and I mean, I had nothing else more than that.

D: Well, here's the story. Tony and another dude show up in my victim's house. I'm assuming it's Tony Martin. He's--was Tony Martin there?

H: No, Tony--Tony--Tony, that light skinned dude. Ton--Anthony.

D: Okay, Anthony Martin.

H: No, no, no, no. My roommate.

D: Your roommate, yeah.

H: Yeah. He--my roommate, he, he--

D: Your roommate has nothing to do with this at all?

H: Yeah. No.

D: No.

H: He wasn't even there when we leave.

D: Okay. Well, my victim says that Anthony Martin and Tony, the light skinned dude, show up at the house. He initially got the call to go over there. They show up at the house, about twenty minutes later, you and Keyon show up at the door. You're carrying a sawed-off shotgun.

H: A what?

D: Yeah.

H: Oh, hell no.

D: A sawed-off shotgun.

H: I don't have no shotgun.

D: Keyon's armed with a handgun and Martin--and Martin's armed with a handgun. You guys go in there, you rob them, you guys all take off running.

H: We rob 'em? Wh--where do we rob 'em from? I mean--

D: You guys--

H: I mean (unintelligible).

D: Cash was taken, CDs were taken, the driver's license was taken, his cell phone was taken.

H: Oh, okay, so--so basically he didn't say the weed, 'cause that's what I had.

D: No.

H: So that's not what I had--

D: Yeah, pretty much.

H: So basically--I don't know what I'm doing here. [LAUGHS]

D: You were implicated--

H: I had no sawed-off shotgun.

D: You were implicated in a robbery, okay? You were there at the commission of a robbery. Okay?

H: Mmm.

D: That's what you're doing here. Okay, you're under arrest for robbery. Alright, and I'll tell you right now your story doesn't match up for what's going on, in any way. Your story does not match up. And like you said, you had a clean record man.

H: Yeah.
D: You have a very clean record.
H: Yeah, I mean I don't have no reason to--
D: And I'm in shock--
H: (Unintelligible)
D: And I'm in shock as to why you would do something like this all of a sudden. You know, why is--why is Tony's story and my victim's story match up but yours is completely different from everybody else's? Yours is completely different; one hundred percent different from everybody else's.
H: Mm-hmm.
D: Yours has nothing, nothing in common with what occurred with my victim--with what my victim said and with what Tony said, at all.
H: Well, it's the truth.
D: So--
H: I don't have no sawed-off shotguns, I don't have no paraphernalia or guns, no bullets. The only thing I had that day was weed.
D: So you're telling me that you--you were at home by yourself? And then all of a sudden there's a knock at the door and it's Tony and--and Keyon?
H: Mm-hmm. No, Keyon was already over there.
D: Keyon was already at your house?
H: Yeah.
D: Okay, so it was you and Keyon? You guys were playing Play Station?
H: Yeah. (Unintelligible)
D: Okay, okay, so Tony shows up.
H: From Jerry's house.
D: From Jerry's house. Jerry…across the way?
H: Yeah.
D: Okay.

H: He hangs there.
D: So he walks over there by himself?
H: Mm-hmm.
D: And he says, "Hey, let me borrow your phone."
H: Yes.
D: So then he ge--calls whoever, you know, hey, what's up, what's up. Hey, you know, we'll, ah, you know, cruise over to your house, drink beer, get, you know, get high, or whatever.
H: Mm-hmm.
D: Okay, so he asked you--
H: Mm-hmm.
D: "Do you wanna go over there?" You say, "Sure." So you--
H: (Unintelligible)
D: Yeah, so he says okay first, for you to come over with 'em. But you, Tony and Keyon all pile up in your car, in your Camaro--
H: Mm-hmm.
D: Drive over to La Mesa. You guys go to the door, hey, "What's up, what's up?" Mom's there, she sees you guys, you guys go upstairs.
H: Mm-hmm.
D: Then all of a sudden outta nowhere, Keyon and Tony started arguing about something in the past?
H: Mm-hmm.
D: So then--
H: And she can tell you. If you wanted to ask the mom, you can ask her too.
D: Okay, yeah.
H: She was standing in the middle of the hallway.
D: Okay, so then all of a sudden they start arguing. You know, blah, blah, blah, you knew they were arguing, alright you guys--you and Jessie break it up and (unintelligible) blah,

blah, blah, and then all of a sudden, you know, Keyon pulls a gun out. You know, "Where's the money, where's the money?" Where was mom at that time?

H: Mom? I believe she was downstairs.

D: Yeah?

H: She had to be downstairs. I think, ah, in the (unintelligible).

D: Okay.

H: And--and (unintelligible) why would they say a shotgun or--or--or whatever they said? How am I gonna carry a shotgun in the house?

D: They say--

H: I mean, how can I--

D: They said you were wearing a trench coat that day. What were you wearing?

H: A trench coat?

D: Mm-hmm.

H: I had on all black.

D: Okay.

H: I don't have no trench coat.

D: Okay.

H: A slip over coat maybe, ah, ah, one of them zip-ups. But it was no trench coat. You can't put a--how you gonna put a sawed off shot gun--

D: Well, a sawed-off shotgun's only about that big man.

H: A sawed-off shotgun?

D: Yeah. A sawed-off shotgun man.

H: Well, that's something I don't have [LAUGHS].

D: It's not that--it's not that very big. So and then all of a sudden Keyon pulls a gun out and says, hey, you know, where's your money, where's your money. You--so he tells you to grab something, so you grab some weed and how much--about how much weed was it?

H: It was two long (unintelligible).

D: Okay.

H: It was two long two long (unintelligible).

D: (Unintelligible)

H: They were in a jar, yeah. Yeah, buds in a jar, yeah. I put them in my pocket and took off.

D: Okay. And then you guys take off. Tony takes off. Keyon takes off and you take off. And then you drive back and you leave your homeys back at the area where you left off.

H: Yeah.

D: Okay.

H: I wasn't--you know what I mean? I'm wasn't gonna be a part of it. They put me a part of it, but I'm not trying to--you know what I mean? I mean, I could see if my record was messed up or I could see if I had priors or something for the same--you know, get a ticket, you get another ticket. I just--

D: You working right now?

H: I was gonna start work on the 27^{th}.

D: Doing what?

H: Dial America, Telemarketing.

D: Uh-huh.

H: You can call and check on that. Matter of fact, I can give you the number.

D: Okay. Where you moving to?

H: I was gonna stay with my uncle.

D: Your uncle?

H: Yeah, that--why would I do something and then--see, okay the thing about it is, when--when Anna evicted Jerry, you can't stay in the same complex with family members.

D: Mm-hmm.

H: If I would've done something in there wrong--that--that drastic, you know what I mean?

D: Mm-hmm.

H: I would not be able to stay from 53, from apartment number 9.

D: Mm-hmm.

H: She said I can move in apartment number 9, stay there with my uncle. If--if I did something of that nature knowing that, oh, that's his friends, just--remember she--she doesn't say that if she know him or know him, you're out too.

D: Mm-hmm.

H: You know what I mean? I know they just--you know what I mean? It's just people living in there, you know your neighbors.

D: Yeah.

H: So that's why--that's the whole thing there. She--she--she wouldn't let me move in with my uncle if there was something really going on like that. She wouldn't want--if that was a real problem, she wouldn't want nothing of that nature around her apartments.

D: You claim man?

H: Do I claim a gang?

D: You claim a gang? Don't claim any gangs?

H: No gangbanging, no gang (unintelligible).

D: Okay.

H: The only problem was that if anything would've happened--

D: Do you--

H: The cops are gonna look me up.

D: Do you kick it with anybody?

H: No.

D: No?

H: They--they come knocking on my door. I was sitting up in there. You can ask Anna, she was--

D: Okay.

H: The only reason we got evicted was because my--my roommate--

D: Yeah?

H: He was late on his rent. I was a month over my rent. All I had to do was pay two hundred bucks this month.

D: How about, ah, Keyon, does he claim? Does he bang?

H: I don't know nothing about--I don't--
D: How about Tony, does he bang?
H: I don't know.
D: No, your roommate.
H: No. That's why I'm saying all this stuff is like, just to the forefront, don't--don't solve that. I mean if you look at the hard, concrete evidence--
D: Explain--you know--
H: Well--
D: You know what? I'm more entitled to believe Tony and my victim, inclined, to what you're telling me because, you know, you're the lead--you--there's nothing--there's nothing that goes along with what everybody's telling me. Man, yours is completely different from everybody else. Your story is completely different from everybody else. Nothing matches.
H: So--so in the story man, what makes--what makes it different that, you mean by--what makes the story different?
D: What makes the story different?
H: From--from what I said.
D: Is that you showed up with Keyon.
H: Mm-hmm.
D: Twenty minutes after Tony and Tony Martin and Anthony Martin show up at the house. Okay?
H: Anthony Martin?
D: Well, that's what they're telling me. I'm saying--
H: Told you it was Anthony?
D: Yeah, they're saying they were there, he was there. Okay, that's one thing that's different. You were picked out from a photo lineup that you were there. Tony tells me--
H: Well (unintelligible)--or you know what? When you get Anthony Martin--
D: Uh-huh.

H: And he comes here--and--and--and, can you please show the face to the--to the guy?

D: Mm-hmm.

H: The--the--to the witnesses of--of the home?

D: Mm-hmm.

H: Show 'em the face and then Tony--I mean Anthony Martin will be excluded and then you're gonna see who's lying. When you guys find Tony--when you guys look just like when you guys found me--

D: Mm-hmm.

H: When you find Tony, please take a picture of Tony, Anthony Martin--

D: Mm-hmm.

H: And--and show it to the, ah--

D: I already did.

H: to the family--

D: I already showed his picture.

H: And what did they say?

D: They picked 'em out. The said he was there.

H: Anthony Martin?

D: Mm-hmm.

H: Wasn't there. Anthony Martin has hair and he's dark-skinned.

D: I know.

H: Yeah, that--he wasn't even there. That's how I know they're lying. Because he wasn't. It was just me, Keyon and Tony, Anthony Martin wasn't there. He goes to El Cajon City 'cause that's where his baby's momma's at. And at the time he had a warrant. He just got cleared up.

D: Uh-huh. You know what? Right now your story just doesn't match man. 'Cause Tony's telling me that he took the trolley.

H: He took the trolley to La Mesa?

D: Mm-hmm.

H: But--but--oh, wait, wait, wait a minute. This is funny--this is funny. He say he took the trolley to La Mesa?

D: Mm-hmm.

H: How's he gonna take the trolley to La Mesa with no money? How he gonna do all that? Call from my house, say he can bring a friend and take the trolley? I'm driving. Wh--why would I want to take the trolley? I'm driving.

D: How many phone calls did Tony make that day from your house? Just that one?

H: He used the phone one time and then he said, "Oh, hold on," the phone, the line's busy or--or he couldn't get through--

D: Uh-huh.

H: He waited and then he called again.

D: Just using your phone?

H: That phone, yeah.

D: Just using--just that phone, nobody else's phone?

H: Well he probably used Anthony Martin's phone. Was it black? No, no, he used my white one, he used my white one. He used my white one.

D: Okay, didn't use any other phones. Just that one. Okay, how many times was he there during that day? Just--was it just that one time when he was there, when he showed up there?

H: Oh, do you mean did he use the phone over and over?

D: Yeah.

H: Yeah, he used--he was there--oh, once he came to use the phone, he stayed there.

D: Okay, but he was just there that one time. If he just came that one time--

H: (Unintelligible) out of the whole times they were--

D: Yeah, he just came that one time. And he just used your phone the entire time?

H: Yeah.

D: Okay.

H: He's like, "Can I use your phone?" I go, "Oh, okay," all I know is he got the phone.

D: Mm-hmm. Okay, never used anybody else's phone. Um, then explain to me, why is he telling me he took the trolley?

H: Yeah, that's what I'm saying. Why wouldn't--where--where's the trolley ticket?

D: I don't know.

H: Okay, no, no, no. Where--there got to be some kind of hard core evidence or something.

D: No, no. Trolley. I'm--I'm--you know what? I don't have to--

H: He's homeless. He was sleeping in cars.

D: Yeah. I know. People--people jump the trolley all the time. People get on the trolley without paying. That's--shit, that happens on a daily basis man. That's a daily thing.

H: But the funny thing about it is why would I--why would he say that he took the trolley and I'm telling you that we drove.

D: Then--exactly, why would he say that?

H: Yeah, that's what I'm trying to find out.

D: And why is my--and why is my--

H: Don't want to use my car--

D: And why is my victim telling me that Tony and somebody else--some other cat show up at the door but then you show up with another dude, when you show up with Keyon twenty minutes later.

H: With Keyon twenty minutes, nah--they got twist--that's what I'm saying. They're twisting it up.

D: See, their two stories all match. Yours doesn't. Okay? Yours doesn't match at all. At all. Your story does not match their stories one bit.

H: Uh-huh.

D: Okay, not one bit.

H: So--so why--why would--

D: Frankly, I think you're lying to me.

H: No, I'm saying, why would I be in the wrong and they--they have prior records. I don't have any record. I don't have nothing to hide.

D: It doesn't matter if they have prior records or nothing 'cause you know what? People do stupid things sometimes, okay? People--people get involved in stupid things for stupid reasons.

H: Yeah.

D: Okay?

H: Yeah. (Unintelligible) I--I--I--

D: My personal opinion on this whole thing? I think I--you might laugh or you might think this is stupid, you might think I'm--or I could be completely wrong. I think you guys did this as a gang initiation, personally.

H: A gang initiation?

D: Mm-hmm.

H: Nah-ah, I don't bang--I don't gang-bang or nothing.

D: That's my personal view on this.

H: A--a--initiation?

D: Mm-hmm.

H: Well if you wanted to do that, then you can take a picture of me and ask any gang member where am I from, is he associated and they'll tell you no.

D: Well nobody has to tell me who you--who so and so is. That's just not--that's not the way you do it.

H: Well you can ask Anthony. If--if he (unintelligible) you can ask him. I bet you he would tell you.

D: Well, that's just it. Nobody's gonna tell me. Nobody's gonna tell me who's from Skyline and who's from where. You just don't do that.

H: He--he'll tell you. He'll tell you if someone's banging or not.

D: Who?

H: I don't--Tony.

D: Tony?

H: Yeah, he'll tell you if someone's banging. He wouldn't--he wouldn't be like no, he's not banging especially when he's lying like this. It don't make no sense.

D: Your story doesn't make no sense. Why is everybody telling me a completely different story man, than what you're telling me?

H: Because I--maybe they're jumbling it up. I don't even know--first of all, I would have to know him first, alright--alright--he goes to the (unintelligible).

D: (Unintelligible)

H: In order for something to happen, you would have to know someone for something to happen. If Tony and them came over there, why would I be over that person's house?

D: Tony--Tony told me that you went over there with somebody else and he said that you showed up and he didn't know who you guys were.

H: Oh, so now he--he--wait, wait. He said I showed up and he didn't know who I was?

D: Yeah. Yeah.

H: But he--but he really used my phone.

D: Yeah.

H: That should've caught him right there.

D: I know. I know, but it's not--

H: (Unintelligible) didn't know who I am, but he showed up. Think about it.

D: Yeah. I--I know.

H: That should've caught him right there.

D: I know.

H: He's using my phone but he doesn't know me?

D: Exactly. That's just it though. He's using your phone but he says he doesn't know you guys. And, still though, my victim states that Tony showed up with some other guy. You know, their stories--those stories match right there still. Okay?

H: Mm-hmm.

D: Still going one--we got both of those still going the same way. Yes, Tony still lied to me. I still--just--(unintelligible). Tony says he didn't know you guys. Okay?

H: See, I'm--I'm telling--man, I'm telling you, he--he--

D: That's just it. I don't know who's telling the truth. I don't know who's lying and who's telling me the truth, okay?

H: He--I'm telling you, he's lying. He's lying. Something ain't--

D: But I'm more inclined to believe him and my victim because their stories go kind of the same route. Yours kinda goes the opposite way.

H: I don't know what was going on. That's just it. I'm just--I'm just as like out there as you are. But I can tell you everything that happened in the incident. I tell ya everything that happened at the house. You know what I mean?

D: But your story doesn't match, man. Your story doesn't match at all. Why would Tony sit here and tell me that--that he took the trolley. Why would, you know, none of this makes sense man.

H: Well, I'm saying, but just like he said he didn't know me but now he does and--and--and this and that. I mean, come on now. He--taking the trolley and getting in my car is two different things!

D: I know!

H: He got in my car.

D: Why would he tell me differently? Why would he tell me that different?

H: And how did he know what color my car is?

D: He didn't know your car--what color your car is. He didn't tell me that.

H: He--I bet you he will. I bet if you say, well how did he get there? Well, no, no. He told me how he got there--how'd he get there. I guarantee, but what color is the car? It's Green. (Unintelligible)

D: Okay, probably would tell me what color your car is.

H: (Unintelligible) break 'em down in steps. Because if he's lying you can break him down in steps.

D: Oh, you don't need to tell me how to do my job.

H: No, no, no. You're did it good. You did it real good.

D: So, you know, that's--I don't know why he's lying. Why is he lying about all this stuff?

H: Yeah, just like there's a sawed-off shot gun. Oh my God.
D: He's saying that he's a victim in this robbery. He's saying that he's a victim of a robbery. He says that you--that you robbed him.
H: Oh--I robbed him?
D: He said that--
H: He's got called his friend back twice.
D: He says you and--
H: Urged--urged eagerly to call him back to get over there.
D: He said that you--
H: [LAUGHS] But I did it.
D: and Keyon and Anthony Martin all pointed guns at him and forced him outta the house at gunpoint and forced 'em into a car and drove him away.
H: Forced him into--okay--
D: Forced him into a grey Camaro, actually.
H: A grey Camaro?
D: Forced him into a grey Camaro and drove him away.
H: Hey--
D: Drove him down to Lemon Grove trolley--
H: Hey--hey--hey. [LAUGHING] Sorry, I just had to laugh because--
D: Yeah, okay.
H: Grey Camaro, no. Grey Camaro nothing. Whose grey Camaro?
D: I don't know.
H: Well, my Camaro's green.
D: I know, and Anthony's got a white one.
H: Yeah.
D: So--
H: You know, grey Camaro, nothing. And--and--and I think--you know what? Because my roommate Anthony--that's I kept--you kept saying Anthony Martin. First of all, Anthony

Martin was the one talking about, he was like, "I don't like that fool." You know what I mean? Because, you know, he--

D: Uh-huh.

H: You know, his family--you know, he got family from--from different, you know what I mean? But he's like, "I don't like him." You know, he--

D: Mm-hmm.

H: "I just don't like 'em," like that. And he came from Jerry's house so he probably saw him--if anything, he's probably talking about Jerry. I don't think he's talking about Anthony Martin.

D: Okay.

H: Because he was coming from Jerry's house. And Tony, you know, he don't like--you know, Anthony Martin don't like that (unintelligible) right there. So it could be Jerry, I don't know. But ah, it's not Anthony Martin, that's for sure. If you get Anthony Martin here, he's gonna say I was over--I was over (unintelligible).

D: So just--

H: It's probably Jerry.

D: You, Keyon and Anth--and then Tony.

H: That's it.

D: Those are the only three people that are there?

H: Yeah. But I mean--

D: Just you three?

H: Yeah. But I'm saying--

D: Why--

H: If he's coming up with Anthony Martin, he's talking about--

D: Why is my--

H: Jerry.

D: Why is my victim telling me that there were four black guys there?

H: There--

D: And you're only telling me that there's three?

H: Because if there was another person, it's probably gonna be Jerry because that's who he came from the house from.

D: Oh--

H: And didn't (unintelligible) home.

D: Was Jerry there?

H: I didn't see Jerry there.

D: Okay.

H: If there's four black guys, I didn't see nobody--I saw his brother.

D: Okay.

H: I saw the white guy's brother.

D: Yeah, he was there.

H: He's on the--ah--yeah, I saw his brother but I didn't see another guy there.

D: But it was just you, Keyon, and--and Tony?

H: Yeah, we were upstairs.

D: Yeah. You guys were all upstairs and nobody else was there? Just you three? That's it?

H: Yeah, we were upstairs.

D: Okay.

H: Now, if they're talking about some other guy, I don't who the other guy is or--or, you know, what happened or something like that. But I know we was upstairs, us three.

D: Have you heard from Keyon or--or Anthony [YAWNING]--excuse me. Since ah, in a while?

H: No.

D: No?

H: No.

D: Never heard, no letters, no phone calls, nothing?

H: Hmm-mm.

D: Nothing?

H: Because we don't kick it like that.

D: Well--

H: They were just there--

D: Well, you do because Keyon comes over your house and plays Play Station.

H: No, no, I'm saying we don't kick it like that because--do you know what time--that was like only one time because he got kicked outta his baby's momma's house. They was going--"Hey Darrow, is it alright if I come over there and we--you know--we gonna get down with some (unintelligible) and I was like, alright. It was early in the morning (unintelligible).

D: Mm-hmm.

H: You know, it was just that time. You know, he don't--he don't come over like 24/7. You can even ask his--his baby's momma.

D: Uh-huh.

H: Does he go over Apartment 53 all the time? No. He's in front of that green box--

D: Yeah.

H: Or they--or they, ah, or at Jerry's house. I'm in the house. You all would've had my picture if I was on the green box. I don't associate or affiliate at all. I (unintelligible). If she see me affiliating with these screw heads or whatever, she'd kick me out and that'd be the end of it. So I took her word for it and I rode with it. And if that was the case, she wouldn't say I could move into apartment number 9 after we had got evicted from 3.

D: Were you guys drinking when you guys were at home?

H: Yeah, we were sitting over there a little bit drinking.

D: (Unintelligible)

H: But (unintelligible).

D: So Keyon doesn't bang that you know of?

H: Not that I know of.

D: That you know of. You ever seen 'em kicking with any bangers?

H: I see him outside with a lot of 'em kicking it.

D: Mm-hmm.

H: Got a red beanie.

D: Mm-hmm.

H: Got the red, ah, sweats, the black shirt. You know, just other people just come from Hidden Meadows.

D: Mm-hmm.

H: I seen 'em up there but as far as know him as banging--he probably does--he probably does. I mean, I'm not gonna just point the finger at him.

D: I know.

H: I just mean, he probably think I bang, and I don't bang. I probably look like a banger though.

D: If you were banging--okay what's--what's the gang in that area?

H: In this area?

D: In that area, yeah, there.

H: In that area is Skyline.

D: Skyline? No Casa De Oro, nothing like that? Skyline?

H: Yeah, just Skyline. Yeah, 'cause I moved from Emerald Hills. I used to live in Emerald Hills.

D: Mm-hmm.

H: So I wouldn't wanna--

D: How about Tony?

H: Emerald Hills area.

D: Huh?

H: Tony, ah, Tony Martin?

D: Tony, ah, no, Gardner.

H: Oh. He--he probably (unintelligible). He hang out here. So I take it he probably (unintelligible). They were gonna jump him in. Ah--ah--ah--

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D: They're gonna jump 'em in?

H: That's what the said a long time ago. I saw Jerry and him. I'm like, "He's gonna get jumped in," 'cause his face was swollen.

D: Uh-huh.

H: A long time ago. And they said, yeah, they would probably jump him in at the, ah, Brook.

D: The Meadow Brook Apartments?

H: Yeah.

D: So they jumped him in?

H: I don't know. They probably--they took him up there that day.

D: Yeah?

H: Yeah, (unintelligible) 'cause every time I, ah, looked outside the court, when I stepped outside, Jerry go like this.

D: Mm-hmm.

H: Like that, mean (unintelligible).

D: So--

H: Then they go to the green box (unintelligible).

D: So you think--you think, ah, and so you think Tony probably got jumped in? 'Cause that's why his--his face was all swollen in and shit?

H: That time his face was swollen?

D: Yeah.

H: Oh yeah, yeah, yeah.

D: He got jumped in?

H: He got jumped in and beat up.

D: Mm-hmm.

H: Well, when you get jumped, you get beat up.

D: Yeah.

H: (Unintelligible) that's how the time I seen the guys. 'Cause he was in the apartments.

He--he was leaving his blood on--on the step going up to Anna, our landlord. Well, they beat 'em up there too.

D: Hmm.

H: She's like, "I don't want 'em on my property." But he keeps coming in the property and (unintelligible) and this and that. And their phone, you know, it was kinda (unintelligible) go to the next neighbor (unintelligible). I mean, everything I'm telling you is the truth.

D: Okay.

H: You can research it. You can take it to court or put it on the--

D: Well, I'm gonna--

H: (Unintelligible) all the time.

D: You know, I'm gonna--I have to take you to jail. And, ah, you're gonna go to court on this and you'll stand trial for this. So--but like I said, man, none of this is making sense. None of this is making sense. Your story's not making any sense to me.

H: Wh--wh--so what--I mean--

D: Why is it different? Why is it so different from everybody else's story?

H: Because--

D: Usually when people are involved in something--or-or--usually they kind of story, you know, like the little things, like why would--why would Tony tell me he took the trolley over there when--

H: Exactly.

D: When you gave him a ride?

H: Right.

D: Why--why doesn't that make sense, you know? Why would he say something like that?

H: Think about his. Kn--knowing what happened, why would I say, "Oh, I drove 'em."

D: Yeah.

H: I would be, oh, yeah, he did take a trolley. You know what I mean? That's like abetting something. You know what I mean?

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D: Yeah.
H: Aiding and abetting. See, I'm telling you the truth. I don't have no reason to lie. I--I have not been in anything --
D: And you--
H: period.
D: And you, Keyon and Tony all went to the door together?
H: Well, me, Keyon and Tony--well, Keyon, he was lagging back 'cause member, Keyon and Tony was talking on the way up to the house.
D: Yeah.
H: And leave me--me--we all get outta the car and walked up there together.
D: Mm-hmm.
H: But Keyon was back here.
D: Mm-hmm.
H: And Tony was right there and I was on the side. And we was walking, he was all, "I know my way, I know my way around here." You know, he was all just like, "Just follow me," you know.
D: Mm-hmm.
H: And they was conversating, whatever and I'm just walking like, okay, yeah, we'll get there, you know.
D: Mm-hmm.
H: Be able to get a ride, you know, whatever, you know. When we got up there it was cool.
D: Uh-huh.
H: For a couple seconds. Ol' boy was straight and everything. Well, ask him. Ol' boy, the dude--that little guy--
D: Mm-hmm.
H: Yeah. Everything was smooth, mellow and everything with no problems. That dude would have never suspected that anything was gonna happen.
D: Okay.

H: That's why I'm--I'm trying to figure out why he twisting up the story. If anything, I'd be like, oh, yeah, he--he sure did take the trolley, yeah.
D: Mm-hmm.
H: Oh, he, oh yeah, that's probably what happened, yeah, or--or I just wouldn't talk. I'm telling you everything.
D: Okay.
H: Everything that we done, everything I know. I'm not trying to hide nothing, 'cause when it hits the fan, it's gonna hit hard.
D: Mm-hmm.
H: That's why I'm getting everything out. I have no reason to lie.
D: And if there's more people that are involved in this, you know, I--I need to know. Because you know what? I think it's just as fair to get everybody that's involved in this and just to weed out the innocent people. You're telling me that there's only three, my guy's telling me four, Tony was telling me four.
H: And if they have somebody--and if they have somebody (unintelligible) 'cause I have no knowledge of that.
D: You have no knowledge of that?
H: No. Or else I would tell you. For real, I have no reason to lie. I--it's early in the morning (unintelligible). You know what I mean? 'Cause of the situation. I'm not--my record's clean. I have--(unintelligible).
D: I know. Exactly. That's why--that's why it seems shocking to me that you would get involved in something like that.
H: Exactly. That's why I didn't even know it was going down like that.
D: Yeah.
H: Or I would've stayed home.
D: Like I said, they pointed you--they said the guy--the tall dude, skinny face with the--with the hair pulled back in a pony-tail was armed with a sawed-off shotgun.
H: Oh, now, that's where they're wrong. That's where they're wrong. I mean, I mean a

sawed-off shotgun? You go to my place right now, tell me what you find.
D: I already did. I didn't find anything.
H: [LAUGHS] Onl--thank you. That's--and I didn't even have time to move. I had my stuff, you know, put up, you know--
D: Uh-huh.
H: Just tucked accordingly but--but it's nothing--I mean, it's still kinda dirty up in there.
D: Uh-huh.
H: Got outta the bed, it's just--it's not even made up. No, point in straightening up, moving out. Everything's sloppy, everything's dirty. Out there--no trash pick up.
D: You guys--were you guys there hanging out there last night, man? There's a lot of beer cans in there.
H: Oh, no, no, no, the electricity went out.
D: Yeah.
H: I was there for a little bit and I left. The electricity went out, we didn't pay the bill. 'Cause no bother, we getting evicted, so... Yeah, but ah, I mean, if they're talking about guns, did you find anything like that? No paraphernalia, no books, no nothing, no shaving, no power, no Q-tips, nothing. I mean, I don't what he's trying to say this and that or-- I don't even have (unintelligible). It makes no sense.
D: Alrighty. You have anything else to add man?
H: That's it.
D: Okay.
H: Take back my phone.
D: Get you outta here.
H: Oh, is there a bathroom?
D: Yeah, I'll take you in a second. [PAUSE IN CONVERSATION]
[BACKGROUND CONVERSATIONS AND NOISES]
D: Alright Darrow.
H: (Unintelligible)

D: (Unintelligible)

H: Okay.

?: [IN DISTANCE] (Unintelligible) hit the joint. Hey, what's up brother, how are you?

?: (Unintelligible)

(END OF TAPE-RECORDED CONVERSATION)

Ground 3

(c) **GROUND THREE**: Petitioner's Due process right Under the FourTeenth Amendment Was Violated Because there Was INSUFFiciENT Admissible EVidence to Support the Jury's True Finding's ON the gang ENhancement. (Specific Intent to promote, Further, Assist gang member

Supporting FACTS (state *briefly* without citing cases or law): IN order to prove this Allegation, each of the Following Elements Must Be proved: (1) that Petitioner committed the crimes charged For the BeNeFit OF, At the Direction OF or iN Association with a criminal street gang and (2) That this crime were committed with the specific intent To promote, Further, or Assist iN ANy criminal conduct By gang members. There Was INSUFFicient Evidence that petitioner committed the robbery with the Specific Intent to promote, Further, or Assist IN ANy Criminal conduct By gang Members. The quoted Language Requires the Prosecution to prove that a "gang Member" Participated in the crime, or atleast had Something Significant to Do with it. Co-Defendant Jerry Grinston Was the only Documented gangmember Named in the Trial, And the Jury Found him Not Guilty ON AliBi EVidence. IN Other Words, Grinston wasn't there, and there is No Evidence that he had Any other Connection With the crime. Never the Less the result of Grinston's Acquittal Bar's the Jury's verdict agiangt petitioner ON the gang Allegation, By Negating Specific Intent To promote, Further or Assist IN Any Criminal Conduct By gang Member's. Petitioner was Not a gang Member, The Victim was Not a gangmember, The crime Was Not committed in gang territory to Benefit a gang, and the Prosecution's theory that petitioner, a Non-gangmember, RoBBed another Non-gangmember With Specific Intent of Benefiting a gang is Unsupported By the Evidence. See Attached (ExhiBit B). Petitioner Further contend's the imposition of the gang Enhancement Violated petitioner's Constitutional Rights Under the Due process Clause of the Fourteenth Amendment As A matter of LAW. "(Anthony Garcia v. Warden, U.S. District Court 9th District (1/20/05)

Did you raise GROUND THREE in the California Supreme Court?

☑ Yes ☐ No.

5-A

The gang Evidence was irrelevant as to petitioner who
Was Not a Documented Gangmember. Petitioner's lack of gang Affiliation
was confirmed By the Probation Officer in the probation report's and By
Law Enforcement Gang Expert "John Davis and James Bushway," By stating
that the Undersigned contacted the "CAL GAng's Unit," Who reported that petitioner
is Not a Documented gangmember. LAW Enforcement also testified to this Fact
IN Petitioner HAyGood's trial. The introduction of the gang Evidence During
The Trial of the substantive offenses posed a substantial risk of preJudice
To petitioner at petitioner's criminal trial, By the trial court Failing to
Bifurcate the gang Enhancement From the substantive count's. Unitedstates V. Garcia
(9th Cir. 1998) Reverseing Conviction and stating that It would Be contrary to the
Fundamental principles of our Justice system to Find a Defendant guilty on the Basis of
his Association with gangmember's. In this regard, we have stated that Testimony Regarding
Gang membership, "Creates a Risk that the Jury will proBaBly Equate gangmembership with
the charged crime; United States V. Baker (8th Cir. 1996). Kennedy V. Lockyer, (9th Cir. 2004
cases makes It clear that Evidence Relating to gang involvement will Almost Alway's
Be preJudicial and will constitute Reverseable Error; IN sum the use of
Gangmembership Evidence to Imply "Guilty By Association", is Impermissible and
preJudicial. This Violated petitioner's right to Due process and Fundamental Fairnes
Under the Fith, sixth, and Fourteenth Amendment's to the United states Federal constitution,
Because petitioner is not a gangmember, which was Verified By "The Cal Gang's Unit,"
And the Evidence concerning the gang Allegation was Not relevant to prove petitioner
committed a Robbery, and only introduced the Denial of Due process of the 5th, 6th
and 14th Amendment's Because there was Insufficient Admissible Evidence to support
the Jury's True Finding's on the gang Enhancement. Anthony Garcia V. Warden, (U.S. District
Court 9th District 1/20/2005). Petitioner is not a gangmember, the Victim is not a gangmember,
The crime was Not committed in gang territory to Benefit a gang, In retaliation For
an Act of a rival gang, or to intimidate Witnesses or rival gangmembers. IN summary
There was inadmissible Evidence sufficient to support the Jury's true Finding's.
Accordingly, the imposition of the gang Enhancement Violated petitioner's constitutional
right's under the Due process clause of the 5th, 6th, and 14th Amendments.
(U.S. V. Cortinas, (5th Cir. 1998).

The Gang Expert's Inadmissible Opinions that petitioner Committed The Crime to Benefit the gang were speculation and Inadmissible and should not have Been Considered By the court of appeal in Determining Whether Substantial Evidence supported the true Finding on the Gang Enhancement as to petitioner. It is known, and Well Established that Identity is an Issue where Evidence of gangmembership is Recognized To Be a critical Issue. Based on the Not Guilty Verdict By the Jury, The Juror's Believed "Beyond a Reasonable Doubt" that co Defendant Jerry Grinston Wasn't there. Without Co-Defendant Jerry Grinston, there is No gangmember, and without a gangmember, there is No Association with The Specific Intent to promote, Further, or Assist a gangmember. The only Gangmember Identified By the Evidence was Co-Defendant Jerry Grinston, In Which he was Found Not Guilty; So there is a Failure of Proof About the Alleged gangmember who was Mentioned in the Statute, "To Promote, Further or Assist in any Criminal conduct By Gangmember's," Because if It Wasn't co Defendant Jerry Grinston, then there's NoBody Identified In the Evidence, and there's got to Be a gangmember who is in some way committing or Remotely Directing this Criminal Activity, and co Defendant Jerry Grinston Being the only Documented gangmember Identified By the Evidence was Acquitted. The gang Evidence Was Indeed Inflammatory to Petitioner and created a Risk that The Jury would improperly Infer Guilt Due to Criminal Disposition. As A Result, the Acquittal of Co-Defendant Jerry Grinston Bar's the Jury's Verdict "Against" petitioner on the Gang Allegation By Negating, "Specific Intent to Promote, Further or Assist in any criminal conduct By gangmembers." Petitioner is not a Documented gangmember, Nor has any record of Criminal History (Anthony Garcia v. Warden, U.S. District Court 9th District, (1/20/05) Gang Allegation Reversed as illegal Enhancement (1/20/05); (McKinney v. Reese, 9th Cir. 1993, 993 F.2d 1378); (U.S. v. Cortinas, 142 F.3d 242, 248 (5th Cir. 1993).

Petitioner contend's that his Fourteenth Amendment was Violated Because there was Insufficient Admissible Evidence to support the Jury's True Finding's on the gang Enhancement and the Imposition of the gang Enhancement Violated Petitioner's Constitutional Right's under the Due process Clause of the Fourteenth Amendment And the gang Enhancement should Be Reversed As a matter of Law... (see Exhibit-B)

Kennedy v. Lockyer 379 F.3d 1041 (9th Cir. 2004). Cases Makes It Clear that Evidence Relating to gang involvement Will Almost Always Be prejudicial and Will Constitute ReverseAble Error. Evidence OF gang Membership May Not Be introduced as it Was here, to prove intent or Culpability Mitchell v. prunty, 107 F.3d 1337, 1342-45, (9th Cir. 1997), 522 U.S. 913, 118 S.Ct. 295 139 L.Ed. 2d 227 (1997) (Reverseing the Conviction and holding that Evidence OF membership in a gang Cannot Serve as proof OF Intent, Because while Someone maybe an EviL person, that is Not Enough to make him guilty under California LAW). Over Ruled on other grounds By SAntaMaria V. Horsley, 133 F.3d 1242, 1248 (9th Cir. 1998) see Also United States V. Garcia, 151 F.3d 1243, 1244-46 (9th Cir. 1998) Reverseing conviction and Stating that It would Be Contrary to the Fundamental principles OF our Justice System to Find a DeFendant guilty on the Basis OF his Association With Gang Member's. In this Regard, We have Stated that Testimony Regarding gang Membership, "creates a risk that the Jury Will proBaBly Equate gang membership with the charged crime, United States V. BAKer, 98 F.3d 330, 335 (8th Cir. 1996) Internal Quotation and Citation's omitted), We Further Stated that Where as here "gang" Evidence is proffered to prove a SUBStantive Element OF the crime (and Not For Impeachment purposes), It would likely Be "Unduly preJudicial."

Id. IN Sum the use OF gang membership Evidence to Imply "guilty By Association" is impermissiBle and preJudicial. Garcia, 151 F.3d at 1246, and the Gang Enhancement should Be Reversed as a matter OF Law.

"Supporting Cases"

1.) Anthony Garcia V. Warden, U.S. District court 9th District (1/20/2005)
2.) Kennedy V. Lockyer, 379 F.3d 1041 (9th Cir. 2004)
3.) Mitchell V. Prunty, 107 F.3d 1337, 1342-43, (9th Cir. 1997); 522 U.S. 913, 118 S.Ct. 295, 139 L.Ed 2d 287 (1997)
4.) SantaMaria V. Horsley, 133 F.3d 1242, 1248 (9th cir. 1998)
5.) United States V. Garcia, 151 F.3d 1243, 1244-46 (9th cir. 1998)
6.) United States V. Baker, 98 F.3d 330, 335 (8th Cir. 1996)
7.) McKinney V. Rees, 9th Cir. 1993, 993 F.2d 1378.
8.) U.S. V. Cortinas, 142 F.3d 242, 248-49 (5th Cir. 1998)

Ground 4 or Ground ______ (if applicable):

The Trial court prejudicially Erred in Failing to Bifurcate the gang Enhancement From the Substantive count's.

a. Supporting facts:

Before trial, petitioner moved to Bifurcate the trial of the Gang Enhancement From the trial of the Substantive Offenses. The Court of Appeal upheld the trial court's Denial of the Motion to Bifurcate, concluding that the gang Evidence was relevant to counter petitioner's Defense that he unknowingly participated in the crime. The prosecution's Offer of proof For introduction of the gang Evidence Focused on A "PepTalk," that co-Defendant Jerry Grinston gave Anthony Gardner 20 minutes Before petitioner Arrived. There was also Evidence that Jerry Grinston, Not petitioner, said "piru" During the crime. (U.S. v. Baker, 98 F.3d 330, 335 (8th Cir. 1996); In U.S. v. Baker, the Denial of severance was Abuse of Discretion when Evidence of Co-Defendant's inculpatory statement, was admitted, Because Evidence could Not have Been admitted against Defendant, if tried separately, and Risk of substantial prejudice could Not Be over come By Jury instructions Not one of these Fact's Bear's on petitioner's intent or involvement in the robbery. The gang Evidence was Evenless relevant as to petitioner, who was Not a Documented gang member; petitioner's Lack of gang Affiliation Was Confirmed By the probation Department

Supporting cases, rules, or other authority:

Estelle v. McGuire, 502 U.S. 62, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991)
Dowling v. United States, 493 U.S. 342, 352, 110 S.Ct. 668, 674, 107 L.Ed.2d 708 (1990)
U.S. v. Baker, 98 F.3d 330, 335 (8th Cir. 1996); Mitchell v. Prunty, 107 F.3d 1337, 1342-43 (9th Cir. 1997)
U.S. v. Cortinas, 142 F.3d 242, 248-49 (5th Cir. 1998)
U.S. v. Castro, 829 F.2d 1038, 1045 (11th Cir. 1987)
McKinney v. Rees, (9th Cir. 1993) 993 F.2d 1378); Kennedy v. Lockyer, 379 F.3d 1041 (9th Cir. 2004)

Joy Gilmore as well as By Law Enforcement gang Expert John Davis and James Bushway, who was the prosecutor's witnesses who testified in petitioner's Trial as to this. The Introduction of the gang Evidence During the Trial of the substantive offenses posed a substantial risk of prejudice to petitioner. Most of the Evidence was properly admissible only agianst co-Defendant "Jerry Grinston". The Evidence Admitted against petitioner was very prejudicial and highly Inflammatory, and Even though Issues and Evidence were relatively straight forward, Risk of substantial prejudice from Spill Over Effect of conspiracy Evidence of the gang Expert John Davis testimony that petitioner Engaged in a conspiracy to commit robbery for the Benefit of a criminal street gang, was prejudicial Error as an opinion of petitioner's subjective intent, when petitioner was not part of the conspiracy, was too high to be cured by Less Drastic Measured. The introduction of this unduly prejudicial Evidence at petitioner's criminal trial violated his right of Due Process and Fundamental Fairness under the Fifth, Sixth and Fourteenth Amendment's to the United States Federal Constitution. The Evidence concerning The gang Allegation was not relevant to prove petitioner, committed a robbery And only introduced to prejudice petitioner and resulted in "Gross UnFairness" Amounting to Denial of Due Process under the Fifth, Sixth and Fourteenth Amendment's to the United States Federal constitution, and should be reversed as a matter of LAW.

(Estelle v. McGuire, 502 U.S. 62, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991), In Estelle, the U.S. court overturned Because the Erroneous admission of Evidence coupled with a prejudicial instruction, rendered Estelle's trial Fundamentally unfair.

(Dowling v. United states, 493 U.S. 342, 352, 110 S.Ct. 668, 674, 107 L.Ed.2d 708 (1990)

(U.S. v. Baker, 98 F.3d 330, 335 (8th Cir. 1996), In United States verses Baker, the Denial of severance was abuse of Discretion when Evidence of co-Defendant's Inculpatory statement, was admitted, Because Evidence could not have Been admitted against Defendant, If tried separately, and Risk of substantial prejudice could not be over come by Jury Instructions.

(U.S v. Cortinas, 142 F.3d 242, 248-49 (5th Cir. 1998), In United States verses Cortinas, Joinder of Defendant's Improper Because Defendant's were not Associated with co-Defendant's criminal organization.

(U.S v. Castro, 829 F.2d 1038, 1045 (11th Cir. 1987); (McKinney v. Rees (9th Cir. 1993) 993 F.2d 1378)

[Fed. Rules Cr. Proc. Rule 14, 18 U.S.C.A]

Ground 5

(c) **GROUND** [redacted]: The introduction of Detective mercado's opinion that petitioner was Lying and Jesse SAVage and other witnesses were Telling the Truth violated petitioner's right to a Fair Trial and Due process.

Supporting FACTS (state *briefly* without citing cases or law): During Trial, the Prosecutor played an interview Between Detective Mercado and Petitioner. During the interview, Detective Mercado Repeatedly Stated He Believed petitioner was Lying and Jesse savage was telling the Truth, and that in his opinion the robbery was a gang initiation. Detective Mercado's opinion that petitioner was Lying and that other witnesses were in Essence telling the Truth was inadmissible. LAY opinion testimony about the Veracity of a witness or a Defendant is inadmissible. Reversible Error For witness to Testify another witness is Lying Depriving defendant of Due process. The LAW is well established that LAY opinion about the Veracity of particular statements By another is inadmissible on that issue. petitioner's Testimony in the trial was the crux of the case, Either the Jury would Believe petitioner or Not. More over, the introduction of Detective mercado's LAY opinion that petitioner was Lying and Jesse Savage and other witnesses were telling the truth ViolAted petitioner's right to a Fair trial and Due process Guaranteed By the Fifth, Sixth and Fourteenth Amendments to the United States Constitution; Any Failure to preserve the issue Deprived petitioner of Effective Assistance of Counsel. The Admission of this Evidence rendered the Trial Fundamentally UnFair Allowing The Prosecution to present This police Detective SANctioned version in The Form of a lengthy Hypothetical question Violated petitioner's Federal Constitutional Rights of Due process. (United States v. Gutierrez (9th Cir. 1993) 995 F.2d 16

Did you raise GROUND THREE in the California Supreme Court?

☑ Yes ☐ No.

7-A

Ground 6

MC-275

6. GROUNDS FOR RELIEF

Ground 6 State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)*

There Was insufficient Evidence For the RoBBery conviction count 2 of paul savage Because No property Was taken From Him, and the Evidence was insufficient to support the conviction of a second RoBBery count.

a. Supporting facts:
Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time *(when)* or place *(where)*. *(If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

There was insufficient Evidence For the RoBBery conviction count 2 of paul savage Because No property was taken From Him, only his Brother Jesse savage. Jesse savage is a Fully grown young man and was in control of his own property. IN Trial Jesse was asked Does his Brother paul Take his CD's For himself, and his answer was "No" Jesse stated, the only time paul savage is given permission to watch over his, Thing's is when Jesse leaves to go out of Town, Other than that Jesse stated He is in control of his thing. The property of Jesse savage was taken in the presence of Jesse savage there Fore Leaving him in control of his own property. people V. George (2004) and Blakely V. Washington (2004).

IN petitioner's trial, the Trial court Erred IN, For 1.)

b. Supporting cases, rules, or other authority (optional):
(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

People V. George (2004) 122 cal. App. 4th 419,
Blakely V. Washington (2004) 542 U.S. 296, 124 S.ct. 2531, 159 L.Ed.2d 403

Denying petitioner's request to BiFurcate Trial on the Enhancement Allegation's that he Acted For the BeneFit OF a criminal street gang in committing the Underlying offense, 2.) Admitting hearsay and Expert Evidence relating to the Enhancement and 3.) Failing to give a limiting Instruction regarding the Jury's use OF such Evidence, Because the Evidence was insufficient to support the conviction OF a second roBBery count. There Fore Petitioner contend's that the conviction OF the second RoBBery count should Be reversed as a matter OF Law, Because the Evidence was insufficient to support the conviction OF a second RoBBery count.

EXHIBIT COVER PAGE

B

EXHIBIT

Description of this Exhibit: Motion's and ProBation Report's OF Petitioner (Darrow HAYGOOD)

Number of pages to this Exhibit: 5 pages.

JURISDICTION: (Check only one)

- [ ] Municipal Court
- [ ] Superior Court
- [ ] Applellate Court
- [ ] State Supreme Court
- [x] United States District Court
- [ ] State Circuit Court
- [ ] United States Supreme Court
- [ ] Grand Jury

(Exhibit B) Pg 107

("Probation" Report)

CRIMINAL HISTORY:

SOURCES OF INFORMATION for this section

RAP SHEET DATED 9/18/03

DATE	AGENCY	CHARGE	DISPOSITION
2/18/03	LMPD	COUNT 1 PC211/213 (a)(1)(A) COUNT 2 PC211 (a)(1)(A) ADMITS ALLEGATIONS PC12022.53(b) PC186.22(b)(1)	SCE229595: **FELONY INSTANT OFFENSE**

PROBATION AND PAROLE:

SOURCES OF INFORMATION for this section

PROBATION RECORDS

Apparently, this was the defendant's first arrest and he was not on probation or parole at the time of the instant offense.

(Exhibit "B")

("Probation" Report)

Education:
The defendant graduated from Madison High School in 1994. He attended one semester of college in 1995 and has a certificate of completion to re-build car engines.

Military Service:
Denied.

Employment History:
The defendant was just hired by Dial America and was to begin training when he was arrested in the instant offense. Prior to that he worked for Pacific Coast Collections for six months. He left that position as a collection agent following a disagreement he had with his boss. The defendant felt he was not getting the full amount of commission he should have. Prior to that, he worked for one year with the San Diego Transit Authority as an auditor before he was laid off. Before he got that job he worked for Federal Express for four months, but was fired for being late to work all the time as he had to commute so far.

Financial Information:
The defendant has no job and no money. He could get his job back at Dial America if he was released. His mother would support him financially if need be.

Psychological and Medical Problems:
Denied.

Substance Abuse and Treatment History:
The defendant first tried marijuana at age 21. Prior to his arrest, he was smoking marijuana about three times a month. He never smoked everyday or more frequently than three times a month because he plays so much basketball, he cannot be bothered getting winded. He denied any other drug experimentation or usage.

Gang Affiliation:
The defendant denied being in a gang. The undersigned contacted the CAL Gangs Unit who reported the defendant is not a documented gang member.

Immigration Status:
The defendant was born in the United States.

Future Plans:
The defendant planned on working, going back to school, taking care of his son and bettering himself in every way.

Other:
The defendant would describe himself as sharp, honest and a personable family man.

(Exhibit) "B"

Gilbert E. Newton 31801
133 West Lexington
El Cajon CA 92020
619 444 1121

Attorney for Darrow Haygood

FILED
Clerk of the Superior Court
SEP 22 2003
By: V. PENDLETON, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. DARROW DEWANN HAYGOOD, Defendant.	No. SCE 229595 POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR NEW TRIAL Hrg: 10-8-03 1:30 p.m. Dept. 14

Defendant Darrow Dewann Haygood submits this Points and Authorities in support of his motion for a new trial. This motion is directed primarily to the gang allegations of Count 1 and Count 2, under Penal Code 186.22(b)(1).

Defendant Haygood's contention is that the jury's acquittal of codefendant Grinston on an alibi leaves insufficient evidence to support the special finding on the gang allegation. Grinston was the only alleged perpetrator who was supposedly a gang member.

In Mr. Haygood's trial, the jury was instructed on an uncharged conspiracy (CALJIC 6.10.5 -- 6.24). As a result the acquittal of Grinston bars the jury's verdict against Haygood on the gang allegation, by negating specific intent "to promote, further or assist in any criminal conduct by gang members."

Should the Court deny the motion for new trial, then defendant will move the Court at time of sentencing to strike or to dismiss in furtherance of justice, the gang enhancements on both counts, Penal Code 1385. Also Penal Code 186.22(g):

> (g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section . . . in an unusual case where the interests of justice would be best served . . .

September 22, 2003

s/

Gilbert E. Newton
Attorney for Darrow Haygood

MOTION TO STRIKE GANG ENHANCEMENT

Defendant Haygood moves to strike the gang enhancement under both counts in furtherance of justice, under Penal Code 186.22(g):

> (g) Not withstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

Rule 4.413(c) provides advisory criteria to guide the court on finding an "unusual case" within the context of probation elegibility:

> (1)(i): The fact or circumstance giving rise to the limitation is, in this case, substantially less serious than the circumstances typically present in other cases involving the same probation limitation, and the defendant has no recent record of committing similar crimes or crimes of violence.

In this case Defendant Haygood is not a gang member, and has no criminal record, and no record of violence.

> (2)(iii): The defendant is youthful [26 years] . . . and has no significant record of prior criminal offenses.

Both of these cited criteria apply to Mr. Haygood, and indicate that this may be an "unusual case" in which the motion to strike might be granted.

In addition, the Court is asked to consider and to find all of the circumstances in mitigation detailed above on page 11 in making a finding that the "interests of justice would be best served" by striking the gang enhancement under Penal Code 186.22(g).

EXHIBIT COVER PAGE

C

EXHIBIT

Description of this Exhibit: Darrow Haygood Declaration Under Penalty of Perjury

Number of pages to this Exhibit: 10 pages.

JURISDICTION: (Check only one)

- [ ] Municipal Court
- [ ] Superior Court
- [ ] Applellate Court
- [ ] State Supreme Court
- [x] United States District Court
- [ ] State Circuit Court
- [ ] United States Supreme Court
- [ ] Grand Jury

Darrow D. Haygood V-84189
CSP-Sacramento
P.O. Box 290066
Represa, Calif. 95671-0066
In Pro se

Supreme Court of California

Darrow D. Haygood
Plaintiff.

v.

Defendant

Declaration of Darrow D. Haygood

I, Darrow D. Haygood, Being competent to make this Declaration and having Personal Knowledge of the matters stated Therein, Declare pursuant to 28 U.S.C. §1746:

1. On April 12, 2003, Detective Mercado came to my uncle's Apartment and told me that I've Been identified in a robbery when He Arrest me.

2. Detective Mercado Told me that he was having the police Take me down to the police station so he question me About the Robbery.

3. The police Drove me Down to the police station in which I was than Taken into the interview Room and Informed that Detective Mercado would Be in A Minute.

4. When detective Mercado came into the interview room, he questioned me about the robbery, gang's and my co-defendants.

5. During the interview, I told detective Mercado that I don't know why im down at the station.

6. Detective Mercado told me that I've been identified in a robbery and that im under arrest, that's why I was there.

7. Detective Mercado continued to question me about the robbery, gang's and co-defendants.

8. After detective Mercado finish asking me questions, I was taken to be booked into the County Jail.

9. Detective Mercado did not read me my Miranda Rights at my uncle's apartment when he arrested me to be taken down to the station to be questioned, as he stated that I've been identified in the robbery.

10. Detective Mercado did not read me my Miranda Rights when he came into the interview room prior to questioning me about the robbery, gang's and my co-defendants.

11. Detective Mercado did not read me my Miranda rights during the middle of the interview when he told me for the first time ever that I was under arrest for robbery.

12. Detective Mercado did not read me my Miranda rights prior to me booked in the County Jail.

13. My Attorney Told me what is the Miranda Rights and how it works.

14. My Attorney Never asked me if Detective Mercado ever read me my Miranda rights.

15. My Attorney Never asked me if I waived My Miranda rights, Prior to Making Any of the Statements that I made to Detective Mercado.

16. Had Detective Mercado read Me My Miranda rights Prior to Asking me questions about the Robbery, gang and My co-defendants, I would have Told him that I wish to remain silent and request For An Attorney.

17. During The Entire Interview of Me Being questioned about the Robbery, gang's, and My Co-Defendants, I was recorded From the Begining to the End Also Proving that Detective Mercado Did Not Ever read me My Miranda Rights.

18. Detective Mercado Never Testified that he read Me My Miranda rights that I recall.

19. Never Did the prosecutor or My Attorney ever asked me if Detective mercado read me my Miranda rights or if I waived my Miranda rights During my Trial when I Took the stand.

Pursuant to 28 U.S.C §1746, I Declare under Penalty of Perjury under the Laws of the state of California that The Foregoing is true and correct to my personal knowledge. Executed on this 14th Day of AUG 2007.

Respectfully Submitted

Darrow Haygood

Darrow D Haygood

Darrow D. Haygood V-05189
CSP-Sacramento
P.O. Box 290066
Represa, Calif 95671-0066
Counsel For Petitioner
In Pro se

Supreme Court of California

In re:
Darrow Dewann Haygood
On Habeas Corpus

Request For Appointment of Counsel and Declaration of Indigency

I, Darrow D. Haygood, Declare that I am the Petitioner to the above-referenced Matter, That I am Incarcerated at CSP-Sacramento New Folsom state prison, and that I am indigent and unable to afford counsel. My Total assets are $ NONE and my income is $ NONE per Month.

I hereby request that counsel be appointed in this matter so that my interest may be protected by professional Assistant as would be required (see Attachment "A" and "B")

I Declare under penalty of perjury that the Foregoing is True and correct and that this Declaration was Executed on 14th of AUG 2007

Respectfully submitted
X Darrow Haygood
Darrow D. Haygood
In Pro se.

Darrow D. Haygood V-09189
CSP Sacramento
P.O. Box 290066
Represa, Calif 95671-0066
Counsel For petitioner
In Pro se

("Attachement "B")

Supreme Court of California

In Re:
Darrow Dewann Haygood
On Habeas Corpus

Declaration of
Darrow D. Haygood

I, Darrow D. Haygood, Declare:

1. That I am over 18 years:

2. That I am the petitioner in the above referenced Matter,

3. That During the last three month Mr. Martin Prepared my writ of Habeas corpus as well as explain the Law to me.

4. That Mr. Martin is the author of my petition and all Documents that have Followed:

5. That I am Not able to prepare my petition Nor Am I Able to File my own Traverse In this matter.

I Declare under Penalty of perjury that the Foregoing is True and correct and if I am called to testify I would completely Do so.

Dated this 14th Day of AUG, 2007, In Represa California.

X Darrow Haygood
Darrow D. Haygood
In Pro se

Darrow D. Haygood V-01189 (Attachment A)
CSP Sacramento
P.O. Box 290066
Represa, Calif 95671-0066
Counsel For petitioner
IN Pro se

Supreme Court of California

IN Re:
Darrow Dewann Haygood
ON Habeas Corpus

Declaration OF Steven A. Martin

I, Steven A. Martin Declares:

1. That I am over the age of 18 years;

2. That I have review the available records of Mr. Haygood within the last three Months.

3. That During those three months I prepared The writ of Habeas corpus For Mr. Haygood as well as Explain the Law to him as I read and understood it;

4. That I am No longer able to prepare Legal Documents or responses Being that CSP-Sacramento is moving all inmates off of the B-Facility General population mainLine.

5. That my only communication with Mr. Haygood is limited and comes to a End once TransFerred.

6. I am Now and will continue to Be available to Mr. Haygood For any Informations that I might offer him, his Future counsel, and the court in this Matter.

I Declare under penalty of perjury that the Foregoing is True and correct and if called to testify I would completely Do so.

Dated this 14th of AUG 2007 at Represa California.

Respectfully Submitted
X Steven a. Martin D-48283
Steven A. Martin D-48283

PROOF OF SERVICE

(C.C.P. §2015.5; 28 U.S.C. §1745

I, Darrow Haygood, am over the age of eighteen (18) years, and I (am) (am not) a party to the within cause of action. My address is:

B-2-128
C.S.P Sac IV New Folsom
P.O.Box 290066
Represa, ca 95671

On, March-25-2008, I served the following documents:

Petition For writ oF Habeas corpus

on the below named individuals by depositing true and correct copies thereof in the United State mail in Represa, California, with postage fully prepaid thereon, addressed as follows:

1. United states District court southern
Federal OFFice Building
880 Front street, suite 4290
sanDiego, ca 92101-8900

2.

I have read the above statements and declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 25th day of March, 2008, at California State Prison at Sacramento, Represa, California.

(Signature) [signature]
Declarant